BAIL SLIP in Crl.A.No.942/04.

The Petitioners i.e. Accused 1 and 2 namely 1) Moorthy and 2) Basavan @ Settu were directed to be released on bail as per the order of the Court in Crl.M.P.No.11677/04 in Crl.A.No.942/04 dt. 30.12.2004.

BAIL SLIP in Crl.A.No.834/04.

The petitioners 1 to 3 i.e. Accused 3 to 5 namely 3) Murugan 4) G.Lakshmanan and 5) G.Venkatachalam were directed to be released on bail as per the order of the Court dt. 20.9.2004 in Crl.M.P.No.9697/2004 in Crl.A.No.834/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2006

CORAM

THE HONOURABLE MR JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal Nos. 834 and 942 of 2004

1. Moorthy
2. Basavan @ Settu
3. Murugan ... Appellants in Crl.A.No.834 of 2004/ Accused 3 to 5.

4. G.Lakshmanan
5. G.Venkatachalam ... Appellants in Crl.A.No.942 of 2004. Accused 1 and 2.

Vs

State rep. by
Inspector of Police,
Nagarasampatti Police Station. ... Respondent in both the appeals.
Dharmapuri District.
[Cr. No.46/2001].

Prayer: Appeals against the judgment passed by the learned I Additional Sessions Judge, Dharmapuri District at Krishnagiri, in S.C.No.129 of 2002 dated : 10.02.2004.

For Appellants in Crl.A.No.834/04 : Mr. V.Gopinath, S.C., for Mr.K.Selvarangan.

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For Appellants in Crl.A.No.942/04 : Mr. R.Sankarasubbu

For Respondent in both appeals : Mr.P.Kumaresan
Addl. Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

This judgment shall govern the above two appeals. A-1 and A-2 in S.C.No. 129 of 2002 on the file of the I Additional Sessions Division, Krishnagiri, filed Crl.A.No.942 of 2004, while A-3 to A-5 in the said Sessions Case filed Crl.A.No.834 of 2004. The appellants in these two appeals along with another accused, who was shown as A-6, stood charged as follows:-

A-2 to A-4 and A-6 were charged under Section 147 IPC., while A-1 and A-5 were charged under Section 148 IPC. A-1 was also charged under Sections 323 IPC. (2 counts) and 324 IPC., while A-2 to A-6 were each charged under Sections 323 read with 149 IPC. and 324 read with 149 IPC. Further, A-2 was also charged under Section 325 IPC., while A-1 and A-3 to A-6 were each charged under Section 325 read with 149 IPC. A-3 was also charged under Section 323 IPC. (3 counts), while A-1, A-2 and A-4 to A-6 were each charged under Section 323 read with 149 IPC. A-4 was charged under Section 325 IPC., while A-1 to A-3, A-5 and A-6 were charged under Section 325 read with 149 IPC. A-4 was also charged under Section 323 IPC. (2 counts), while A-1 to A-3, A-5 and A-6 were each charged under Section 323 read with 149 IPC. A-5 was charged under Section 323 IPC. (2 counts), while A-1 to A-4 and A-6 were each charged under Section 323 read with 149 IPC. A-5 was also charged under Section 324 IPC., while A-1 to A-4 an A-6 were each charged under Section 324 read with 149 IPC. A-6 was charged under Section 323 IPC. A-1 was also charged under Section 302 IPC. while, A-2 to A-6 were charged under Sections 302 read with 149 IPC.

2. On trial, A-1 was found guilty under Sections 148, 323 (2 counts), 323 read with 149 (2 counts), 324 (2 counts), 325 read with 149 (2 counts) and 302 IPC. He was sentenced to undergo three years rigorous imprisonment for the offence under Section 148 IPC. and to pay a fine of Rs.1000/- under each count for the offence under Section 323 IPC. (2 counts), in default, to undergo one year imprisonment. He was also directed to pay a fine of Rs.1000/- under each count for the offence under Section 323 read with 149 IPC. (2 counts) in default, to undergo one year imprisonment, also to pay a fine of Rs.3000/- under each count for the offence under Section 324 IPC. (2 counts) in default, to undergo three years imprisonment. He was also directed to undergo five years rigorous imprisonment also to pay a fine of Rs.1000/- under each count for the offence under Section 325 read with 149 IPC. (2 counts), in default, to undergo one year imprisonment, and for the offence under Section 302 IPC., A-1 was sentenced to undergo life imprisonment and also to pay a fine of

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Rs.1000/- in default, to undergo one year imprisonment.

A-2 was found guilty under Sections 147, 323 read with 149 (3 counts), 324, 324 read with 149 IPC. 325, 325 read with 149 and 302 read with 149 IPC. He was sentenced to undergo two years rigorous imprisonment for the offence under Section 147 IPC., to pay a fine of Rs.1000/- under each count under Section 323 read with 149 IPC. (3 counts), in default, to undergo one year imprisonment, also to pay a fine of Rs.3000/- for the offence under Section 324 IPC., in default, to undergo three years imprisonment. He was also directed to pay a fine of Rs.3000/- for the offence under Section 324 read with 149 IPC., in default, to undergo three years imprisonment, and for the offence under Section 325 IPC., he was sentenced to undergo five years imprisonment and also to pay a fine of Rs.1000/- in default, to undergo one year imprisonment. He was also sentenced to undergo five years rigorous imprisonment with a fine of Rs.1000/-, in dafault, to undergo one year imprisonment for the offence under Section 325 read with 149 IPC. and to undergo life imprisonment with a fine of Rs.1000/-, in dafault, to undergo one year imprisonment for the offence under Section 302 read with 149 IPC.

A-3 was found guilty under Section 147 IPC. and sentenced to two years rigorous imprisonment and for the offence under Section 323 IPC., he was sentenced to pay a fine of Rs.1000/- in default to undergo one year imprisonment and for the offence under Section 323 read with 149 IPC. (2 counts), he was sentenced to pay a fine of Rs.1000/- in default to undergo one year imprisonment under each count. He was also found guilty under Section 324 IPC. and sentenced to pay a fine of Rs.3,000/- in default to undergo three years imprisonment and for the offence under Section 324 read with 149 IPC. he was sentenced to pay a fine of Rs.3,000/-, in default, to undergo three years imprisonment. He was also found guilty under Section 325 read with 149 IPC. (2 counts) and sentenced to undergo five years rigorous imprisonment and also to pay a fine of Rs.1,000/- in default to undergo one year imprisonment and for the offence under Section 302 read with 149 IPC. he was sentenced to life imprisonment and to pay a fine of Rs.1000/- with a default sentence of one year imprisonment.

A-4 was found guilty under Section 147 IPC. and sentenced to two years rigorous imprisonment and for the offence under Section 323 IPC., he was sentenced to pay a fine of Rs.3,000/- with a default sentence of three years imprisonment. He was also convicted under Section 323 read with 149 IPC. (3 counts) and sentenced to pay a fine of Rs.1,000/- under each count in default to undergo one year imprisonment and for the offence under Section 324 read with 149 IPC. he was sentenced to pay a fine of Rs.3,000/- in default to undergo three years imprisonment. He was also found guilty under Section 325 IPC. and sentenced to undergo five years rigorous imprisonment with a fine of Rs. 1,000/- in default to undergo one year imprisonment and for the offence under Section 325 read with 149 IPC., he was sentenced to undergo five years rigorous imprisonment and also to pay a fine of Rs.1,000/- in default to undergo one year imprisonment and for the offence under Section 302 read with 149 IPC., he was sentenced to life imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year imprisonment.

A-5 was found guilty under Sections 148 and 323 IPC. and sentenced to

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undergo three years rigorous imprisonment for the former and to pay a fine of Rs.1,000/- in default to undergo one year imprisonment for the latter offence and for the offence under Section 323 read with 149 IPC. (2 counts), A-5 was sentenced to pay a fine of Rs.1,000/- in default to undergo one year imprisonment under each count. He was also found guilty under Section 324 IPC. and sentenced to pay a fine of Rs.3,000/- in default to undergo one year imprisonment and for the offence under Section 324 read with 149 IPC. he was sentenced to pay a fine of Rs.3,000/- in default to undergo three years imprisonment. He was also convicted for the offence under Section 325 read with 149 IPC. (2 counts) and sentenced to undergo five years rigorous imprisonment and also to pay a fine of Rs.1,000/- in default to undergo one year imprisonment and for the offence under Section 302 read with 149 IPC. he was sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year imprisonment. A-6 was acquitted of all the charges levelled against her. The learned Sessions Judge also directed that all the sentences imposed upon the appellants/accused shall run concurrently.

2A. The short facts necessary for the disposal of this appeal can be stated thus:-

i. There was a common well, in which, A-4 and P.W.7 had right to take water along with a motor pump at Savlur Village. P.W.5 married P.W.6, the daughter of P.W.7. P.W.5 was also residing in the house of P.W.7. P.Ws.1, 7, 8 and the deceased were all living at Erumapatti village. After the marriage of P.W.5, there was a quarrel between A-4 and P.W.7 with regard to the common well and hence, A-4 dug a separate well and laid pipeline through the land of P.W.7 from the new well, which was objected to by P.Ws.5 and 7. P.W.5 along with others caused damage to the said pipe line. Hence, a complaint was laid to the police. The police intervened and advised P.W.7 first to repair the damage caused to the pipeline and only thereafter, they could settle the matter.

ii. On 31.1.2001 at about 11.30 a.m. P.W.1 was returning to the village from Krishnagiri after selling tomatoes. At that time, P.W.5 came there and take him to Savulur village to irrigate the lands. P.W.1 started the oil motor engine, which was objected to by A-5 and stopped the same. P.W.1 questioned A-5 and informed him that he would start the motor and hence, a quarrel arose between them. At that time, P.W.5 and other accused also came there. A-1 beat P.W.1 with a stick on his head and ran away. While A-5 and P.W.1 scuffling with each other, the father of the deceased, Narayanan, came to the place. At that time, A-1 cut Narayanan on his head thrice with an aruval saying that he is responsible for this occurrence. A-2 beat Narayanan with a stick on his forehead, right wrist and back. He also beat P.W.5 on his right hand, right wrist and back. A-5 beat P.W.6 on her left head and left hand with an iron rod. A-4 caught hold of P.W.7 while A-3 beat P.W.7 on the right shoulder and right side of the head. A-3 beat P.W.8 on the head with a stick. A-1 beat P.W.8 on his nape. A-4 beat on the left wrist of P.W.8. A-5 beat on the right and fore finger. A-4 caught hold of P.W.9 and fisted on the left thigh. A-1 cut P.W.9 on his left side of the head and A-2 beat on his left leg. A-3 beat P.W.7 with a stick

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on his shoulder. At that time, P.W.13 and one Ramasamy came there from Erumapatti in a cycle and found P.Ws.1, 5, 6, 7 and the deceased with injuries. He arranged a tempo and took the injured to the Government Hospital at Kaveripattinam and since no doctor was available at that time, he took the injured to Government Hospital at Krishnagiri and admitted them at 1.30 p.m.

Iii) P.W.2, the doctor attached to Government Hospital, Krishnagiri, admitted the injured, viz., Narayanan as in-patient. Exs.P-25 is the wound certificate and Ex.P-26 is the X-ray report issued by P.W.2. P.Ws.1, 5 and 7 were also treated by P.W.2, who issued wound certificates, Exs.P-4, 3 and 2 respectively for the injuries sustained by them. On the same day, P.W.2 examined A-2, A-4, A-6 and A-5 also and issued wound certificates, Exs.P-21, P-23, P-24 and P-22 respectively. P.W.9 was treated by the doctor, P.W.3, on 12.2.2001 and issued Ex.P-5 wound certificate. He also examined P.W.8 at 8.30 p.m. on the same day and issued Ex.P-6 wound certificate. The doctor also examined P.W.6 at 8.40 p.m. on the same day and issued Ex.P-7 the wound certificate.

iv) Thereafter, the injured Narayanan was referred to Government Mohan Kumaramangalam Hospital, Salem, where he was admitted as in-patient at about 7.05 p.m. on 31.1.2001. P.W.4, the doctor, who was on duty at that time, examined him and issued Ex.P-9, the copy of the accident register.

v) On intimation, P.W.14, the Head Constable attached to Krishnagiri Town Police Station, proceeded to the Government Hospital, Krishnagiri, at 3.00 p.m. and recorded a statement from P.W.1, which has been marked as Ex.P-1. He sent the same to the respective police officer.

vi) P.W.16, the Sub Inspector of Police, Nagarasampatti, received Ex.P-1 at about 6.00 a.m. on 1.2.2001. He also received the death intimation that Narayanan, the father of P.W.1, who was admitted in Government Mohan Kumaramangalam Hospital, Salem, died, on the strength of which, he registered a case in Crime No.46 of 2001 for the offence under Sections 147, 148, 324, 323 and 302 IPC. Ex.P-8 is the printed first information report. He sent the same to the concerned Court and to the higher officials. Thereafter, on receipt of the intimation from the hospital authorities that the accused in Crime No.46 of 2001 were also admitted for the injuries sustained by them, he registered another case in Crime No.47 of 2001 under Sections 147, 148 324 and 323 IPC. at about 6.00 p.m. on the same day.

Vii) P.W.18, Inspector of Police, Pochampalli Police Station, on receipt of the copy of the first information report, took up the case for investigation, proceeded to the scene of occurrence, made an inspection and prepared an observation mahazar, Ex.P-10 and also drew a rough sketch, Ex.P-27. He also recovered blood-stained earth and sample earth under a cover of mahazar Ex.P-11. Thereafter, he went to Government Hospital at Salem and conducted inquest on the dead body

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between 2.30 p.m. and 4.00 p.m. and prepared Ex.P-28, the inquest report, in the presence of witnesses and Panchayatdars. Thereafter, he issued a requisition to the doctor for conducting post-mortem.

Viii) On receipt of the requisition, P.W.17, the doctor attached to Government Hospital, Salem, conducted autopsy on the dead body and gave his opinion in Ex.P-20, the post-mortem certificate, opining that the deceased died due to head injuries sustained by him.

ix) In the meantime, P.W.18, who conducted investigation, seized the blood stained cloth of P.W.9 on 2.2.2001 at 3.00 p.m. and at 3.15 p.m. he seized the blood stained cloth of P.W.8 and sent P.Ws.6, 8 and 9 for treatment to Government Hospital at Krishnagiri. On 3.2.2001 at 11.00 a.m., P.W.18 arrested A-1. He gave confessional statement and in pursuance of the admissible portion, Ex.P-29, he produced a koduval. He also arrested A-3 at 1.00 p.m. on the same day and he volunteered to give a confessional statement, which was also recorded and in pursuance of the admissible portion, Ex.P-30, the investigating officer recovered sticks and an iron rod. He also arrested A-2, A-4, A-5 and A-6 at the hospital, when they were taking treatment. A requisition was forwarded with the material objects to the Court to subject them for chemical analysis and accordingly, the reports of the Chemical Analyst and the Serologist were also received by the investigating officer. On completion of the investigation, he filed the final report in Crime No.46 of 2001.

x) With regard to Crime No.47 of 2001, the investigating officer referred the same as 'mistake of fact, since it has been stated in the report that in exercise of the right of private defence, the accused attacked the prosecution witnesses and the deceased in Crime No.46 of 2001.

3. The case was committed to the Court of Sessions. Necessary charges were framed and in order to substantiate the charges, the prosecution has examined 18 witnesses and relied on 33 exhibits and marked 16 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. On the side of the defence, neither a witness was examined nor a document was marked. After hearing the arguments advanced by both sides and on scrutiny of the materials available, the trial Court found the accused 1 to 5 guilty as per the charges levelled against them and awarded imprisonment as referred to above and acquitted A-6 of all the charged levelled against her, which is the subject matter of challenge before this Court.

4. The learned Senior Counsel appearing for the appellants in Crl.A.No.834 of 2001 and the learned counsel appearing for the appellants in Crl.A.No.942 of 2004, inter alia, made the following submissions:-

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a) In the instant case, the occurrence has taken place at 11.00 a.m. on 31.1.2001 at the place of occurrence. There is no controversy about the occurrence, but how and the manner in which the occurrence has taken place are not put forth by the prosecution properly. The witnesses examined by the prosecution did not speak about the occurrence or given the correct version and they have spoken falsehood. Even as per the prosecution, there was a common well, for which, P.W.7 and A-4 had got right over it, and hence, there was a quarrel between them. Therefore, A-4 dug a separate well and laid pipe line through the land of P.W.7, which was objected to by P.W.7. He caused damage to the pipe line and hence a complaint was made to the police, who, in turn, advised P.W.7 to first repair the damages caused to the pipeline and then only directed A-4 to take water from the well. Even as per the first information report, before the Court, on the date of occurrence, it was P.W.1, who started the oil engine and there arose the whole occurrence. Thus it would be quite clear that even after the police had advised P.W.7 to repair the damage caused to the pipeline laid by A-4, P.W.7 did not heed the advise, but the prosecution witnesses voluntarily switched on the oil engine and hence, the accused party was perfectly correct in questioning the act of the prosecution witnesses and at that juncture, the occurrence has taken place.

b) In the instant case, in order to establish the prosecution case, the persons, who were shown not only as eye witnesses but also as injured witnesses, viz., P.Ws.1 and 5 to 9 were examined and in respect of the injuries found on them, medical examinations were also done and wound certificates have also been issued. At this juncture, it is pertinent to point out that in the instant case, the doctor, P.W.2, who examined the injured witnesses, also examined A-2, A-4, A-5 and A-6 and issued wound certificates for the injuries sustained by them. A perusal of the same would clearly show that they were injured severely and that too on their vital parts, but the prosecution has no explanation for the injuries sustained by the accused in any manner. The lower Court has pointed out in the judgment that the prosecution has produced all the medical certificates in respect of the injuries sustained by the accused. It is true that the medical certificates were produced and the doctor, P.W.2, was also examined, which would go to show that A-2 to A-6 also sustained injuries in the same transaction. But insofar as the witnesses were concerned, P.W.1 would state that no one was injured in the occurrence. He would further add that he beat A-5 only once. According to P.W.5, it was P.W.8, who beat the accused with hands. According to P.W.6, he did not see whether anybody was injured. According to P.W.8, he also beat the accused only on the instigation of the other accused. All would go to show that from the evidence adduced before the Court through these witnesses, the prosecution has made a feeble attempt to explain the injuries sustained by the accused. It could be further pointed out that from all these injuries, as could seen from the wound certificates, in respect of A-2 to A-6, it would be quite clear that those injuries could not have been caused by attacking with hands, and they could have been caused only by using weapons and thus, the explanation tendered by the prosecution was only an attempt made but in vein. Thus, it could be well

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stated that the prosecution has no explanation for the injuries sustained by accused.

c) Apart from that, in the instant case, the genesis of the occurrence was completely suppressed by the prosecution but it has been brought forth otherwise. The occurrence has actually started at the instance of P.W.1 due to his unlawful act. But the prosecution came forward with a different story complaining that as if at the instance of A-1, the other accused have attacked the prosecution witnesses. Thus, the genesis of the occurrence has also been suppressed by the prosecution.

d) In the instant case, there was an occurrence took place at 11.30 a.m. and P.W.14, the Head Constable, has gone to the Government Hospital at Krishnagiri on receipt of information and has recorded the statement of P.W.1 at about 3.30 p.m. and sent the message to the respondent police station, on the basis of which, a case came to be registered only at 6.00 a.m. the next day morning and hence, there has been an inordinate delay and the prosecution did not explain this delay.

e) Further, the investigation, from its commencement, was thoroughly biased. It could be noticed from the fact that P.W.14, the Head Constable, who recorded the statement of P.W.1 at about 3.30 p.m., also recorded the statement from A-5, who was taking treatment in the same hospital at about 4.30 p.m., pursuant to which, two cases came to be registered by the respondent police, viz., Crime No.46 of 2001 at the instance of the prosecution witnesses and Crime No.47 of 2001 at the instance of the accused. In respect of Crime No.46 of 2001, the case was registered at about 6.00 p.m. on 1.2.2001, whereas Crime No.47 of 2001 was registered at about 6.00 p.m. on the same day. Thus, insofar as the present prosecution case, viz., Crime No.46 of 2001 is concerned, it was registered belatedly and that delay has not been explained by the prosecution. Apart from that, so far as the other crime number is concerned, it was registered, on the complaint given by A-5, after a delay of 20 hours. In the same incident, both parties sustained injuries and the police has not registered the case based on the complaint given the accused immediately or properly investigated the case in Crime No.47 of 2001, which resulted in filing of the referred report.

f) The contents of the referred report filed by the investigating officer in Crime No.47 of 2001 shows that as if there was an attack made by the accused and the prosecution party, in order to exercise their right of private defence to save them, attacked in retaliation and thus, those injuries were sustained on the accused. But it was quite contrary to the facts and circumstances actually happened. The lower Court has not gone into all the details, but has taken a view that the prosecution has proved the case beyond reasonable doubt. In the instant case, since the genesis of the occurrence has been suppressed and prosecution has no explanation for the injuries sustained by A-2 to A-6, all the accused are entitled for acquittal at the hands of this Court.

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5. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions.

6. The Court paid its anxious consideration to the submissions made and thoroughly scrutinised the available materials. It is not in controversy that one Narayanan, the father of P.W.1, died in the incident that took place at about 11.00 a.m. on 31.1.2001 and in order to substantiate that the deceased died out of homicidal violence, the prosecution has not only examined the doctor, P.W.2, who initially treated the deceased and but also, P.W.17, the doctor, who conducted post-mortem and who issued the post-mortem certificate, Ex.P-20, wherein he has opined that the deceased died out of the head injuries sustained by him. Apart from that, the said fact was also not disputed by the accused/appellants either before the trial Court or before this Court and hence, without any difficulty, it could be concluded that the deceased died out of homicidal violence.

7. In the instant case, in order to substantiate the charges levelled against the accused, the prosecution, though examined number of witnesses, placed reliance mainly on the evidence of P.Ws.1 and 6 to 9, who are the injured witnesses. According to the prosecution, there was a dispute dispute between A-4 and P.W.7 in respect of taking water from a well and hence, A-4 dug a separate well and laid pipe line through the land of P.W.7, which was objected to by P.W.7, who caused damage to the said pipe line and hence a complaint was made to the police, who, in turn, advised P.W.7 to first repair the damages caused to the pipeline and then only directed both of them to take water from the well. Even from the evidence of the prosecution witnesses, it was P.W.1, who switched on the motor without even repairing the pipeline and naturally, it was questioned by the other party, that is, A-4 and hence, there was a scuffle and in that scuffle, all the accused attacked the prosecution witnesses as well as the deceased. Even as per the prosecution case, as could be put forth by these witnesses, they have been attacked by the accused and they were taken to the hospital at Salem and were medically examined by P.W.2, who has also given wound certificates, which have been marked by the prosecution. There is no doubt that these witnesses, regarding the injuries, have spoken the truth and with the regard to the same, the prosecution has also brought froth the medical evidence. In the course of the said transaction, it was A-1, who attacked the deceased on the head and caused injuries, which were fatal to which he succumbed.

8. At this juncture, the contention put forth by both the learned Senior Counsel appearing for A-1 and A-3 and the learned counsel for A-3 to A-5 requires consideration. According to them, the genesis of the occurrence was not made known by the prosecution before the Court. This has got to be discountenanced for the simple reason that it is true that the case was registered at the instance of P.W.1 and he has also narrated the entire incident and even from the defence plea, there was an occurrence and from the available materials, it could be seen that even after the police has advised P.W.7 to repair the damage caused to the

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pipeline, P.W.7, without even repairing the pipeline, switched on the motor and the same was questioned by A-4, following which, the whole trouble has started. Under such circumstances, the contention that the genesis of the occurrence was not placed before the Court has got to be discountenanced. There was a free fight between the prosecution witnesses and the accused, in which, P.Ws.1 and 6 to 9 were injured and on the side of the accused, A-2 to A-6 sustained injuries. It is pertinent to be pointed out that these accused were also treated by the same doctor, P.W.2, who treated the prosecution witnesses and issued wound certificates in respect of the injuries sustained by both the parties. On perusal of the wound certificates issued in respect of A-2 to A-6, it would be quite clear that the injuries sustained by them are simple in nature, but they were found to be on the vital parts of the body and these injuries remain unexplained as put forth by both the learned counsel for the appellants.

9. It is true that the prosecution has placed the entire case materials in Crime No.47 of 2001 and even the referred report has also been placed before the Court. Merely because of the marking of the wound certificates in respect of the injuries sustained by the accused, it cannot be said that the prosecution has explained the same. The prosecution must explain as to how and the manner in which the said injuries have been sustained by the accused. An attempt was made by the prosecution, which, in the opinion of the Court, failed, through P.Ws.1, 6, 5 and 8. They have spoken to the fact that the injuries were sustained by both the parties only by attacking with hands. The certified copies of the wound certificates, viz., Exs.P-21 to P-24 with regard to the injuries sustained by A-2 to A-6, would show that those injuries could not have been caused by hands, but they could only be caused by using weapons. Thus, it would be quite clear that the witnesses, with regard to the injuries sustained by the accused, have not spoken the truth, and at the same time, they also sustained injuries in the course of the same transaction. As seen from the materials, it would be quite clear that there was a free fight between the parties, in which, the accused also sustained injuries in the course of the same transaction and only in the exercise of the right of private defence, they have attacked the deceased and in the said transaction, A-1 took a koduval and attacked the deceased on his head and thus, due to apprehension of danger, the accused have caused grievous hurt or death, which would be suffice even to cause the death to the other party. It is to be remembered that in the instant case, the first part of the instigation was made by A-1 and it was he, who caused the fatal injury on the head of the deceased. Insofar as the other accused are concerned, they have only attacked the prosecution witnesses as well as the deceased with sticks and they also sustained injuries in the course of the same transaction.

10. Under such circumstances, the Court is of the opinion that insofar as A-1 is concerned, there cannot be any justification for him to attack the deceased on his head and caused fatal injuries, which led to his death. Further, there cannot be any common object, since the occurrence itself took place in a free fight, wherein both parties have sustained injuries.

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11. Considering the totality of the evidence, when marshalled, the Court is of the considered view that the act done by A-1 would not attract the penal provisions of Section 302 IPC., but at the same time, it would attract Section 304 Part-I IPC. Accordingly, the conviction and sentence imposed upon A-1 are modified and instead, he is convicted under Section 304 Part-I IPC., for which, he is sentenced to seven years rigorous imprisonment. With respect to other charges framed against A-1, they are set aside. Insofar as the other accused, viz., A-2 to A-5 are concerned, they are acquitted of all the charges levelled against them.

12. The appeals are disposed of accordingly. It is reported that A-1/appellant in Crl.A.No.942 of 2004 in this case is on bail. The learned Sessions Judge shall take steps to commit him to prison to serve the remaining period of sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

bs/

To

1.The Judicial Magistrate, Pochampalli.
2.The Chief Judicial Magistrate, Pudukottai.
2a. The Chief Judicial Magistrate, Dharmapuri at Krishnagiri.
3.The I Additional Sessions Judge, Dharmapuri at Krishnagiri.
4.The Principal Sessions Judge, Dharmapuri at Krishnagiri.
5.Inspector of Police, Pochampalli, Nagarasampatti Police Station, Krishnagiri.
6.The Superintendent, Central Prison, Vellore.
7.The District Collector, Dharmapuri District.
8.The Director General of Police, Madras.
9.The Public Prosecutor, High Court, Madras.

Crl.A.Nos.834 & 942 of 2004

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